



6310-02

CENTRAL INTELLIGENCE AGENCY

32 CFR Part 1909

**Access to Classified Information by Historical Researchers and
Certain Former Government Personnel**

AGENCY: Central Intelligence Agency.

ACTION: Final Rule.

SUMMARY: Consistent with Executive Order 13526, the Central Intelligence Agency (CIA) is providing greater clarity about the procedures under which it may provide historical researchers and certain former Government personnel with access to classified CIA information. This rule is being issued as a final rule without prior notice of proposed rulemaking as allowed by the Administrative Procedure Act for rules of agency procedure and interpretation.

DATES: Effective [INSERT DATE OF PUBLICATION OF THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Joseph W. Lambert, (703) 613-1379.

SUPPLEMENTARY INFORMATION: Consistent with section 4.4 of Executive Order 13526, the CIA has revised its access regulations to more clearly set forth the procedures used to provide historical researchers and certain former Government personnel with access to classified CIA information. This rule is being issued as a final rule without prior notice of proposed rulemaking as allowed by the Administrative Procedure Act, 5 U.S.C. 553(b) (3) (A) for rules of agency procedure and interpretation.

List of Subjects in 32 CFR Part 1909

Archives and records, Classified information, Historical records.

Accordingly, the CIA is revising 32 CFR part 1909 as follows:

PART 1909--ACCESS TO CLASSIFIED CIA INFORMATION BY HISTORICAL RESEARCHERS AND CERTAIN FORMER GOVERNMENT PERSONNEL PURSUANT TO SEC. 4.4 OF EXECUTIVE ORDER 13526

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AUTHORITY: Executive Order 13526, 75 FR 707, 3 CFR 2010 Comp., p. 298-327 (or successor Orders).

§ 1909.1 Authority and purpose.

(a) *Authority.* This part is issued under the authority of and in order to implement section 4.4 of Executive Order 13526, as amended (or successor Orders); section 1.6 of Executive Order 12333, as amended (or successor Orders); section 102A of the National Security Act of 1947, as amended; and section 6 of the Central Intelligence Agency Act of 1947, as amended.

(b) *Purpose.* This part prescribes procedures for waiving the need-to-know requirement for access to classified information with respect to persons:

(1) Requesting access to classified CIA information as historical researchers;

(2) Requesting access to classified CIA information as a former Presidential or Vice Presidential appointee or designee; or

(3) Requesting access to classified CIA information as a former President or Vice President.

§ 1909.2 Definitions.

As used in this part:

Agency Release Panel or Panel or ARP means the CIA Agency Release Panel established pursuant to part 1900 of this chapter.

CIA means the United States Central Intelligence Agency.

Control means ownership or the authority of the CIA pursuant to Federal statute or legal privilege to regulate official or public access to records.

Coordinator means the CIA Information and Privacy Coordinator who serves as the CIA manager of the historical access process established pursuant to section 4.4 of the Order.

Days means business days. Three (3) days may be added to any time limit imposed on a requester by this part if

responding by U.S. domestic mail; ten (10) days may be added if responding by international mail;

Director of Security means the CIA official responsible for making determinations regarding all security and access approvals and overseeing execution of the necessary secrecy, nondisclosure, and/or prepublication review agreements as may be required.

Former Presidential or Vice Presidential appointee or designee means any person who has previously occupied a senior policy-making position in the Executive branch of the United States Government to which they were appointed or designated by the current or a former President or Vice President.

Historical researcher means any individual with professional training in the academic field of history (or related fields such as journalism) engaged in a historical research project that is intended for publication (or any similar activity such as academic course development) and that is reasonably intended to increase the understanding of the American public regarding the operations and activities of the United States Government. This term also means anyone selected by a former President or Vice President, or by a former Presidential or Vice

Presidential appointee or designee, to assist them in historical research as a research associate.

Information means any knowledge that can be communicated or documentary material, regardless of its physical form that is owned by, produced by or for, or is under the control of the United States Government.

Interested party means any official in the executive, congressional, or judicial branches of government, United States or foreign, or U.S. Government contractor who, in the sole discretion of the CIA, has a subject matter or physical interest in the documents or information at issue;

Originator means the CIA officer who originated the information at issue, or successor in office, or a CIA officer who has been delegated declassification authority for the information at issue in accordance with the provisions of the Order.

Order means Executive Order 13526 of December 29, 2009 and published at 75 FR 707 (or successor Orders).

Senior Agency Official means the official designated by the DCIA under section 5.4(d) of the Order to direct and administer the CIA's program under which information is classified, safeguarded, and declassified.

§ 1909.3 Contact for general information and requests.

For general information on this part, to inquire about access to CIA information under this part, or to make a formal request for such access, please direct your communication in writing to the Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Inquiries will also be accepted by facsimile at (703) 613-3007. For general information only, the telephone number is (703) 613-1287. Collect calls cannot be accepted.

§ 1909.4 Suggestions and complaints.

The CIA welcomes suggestions, comments, or complaints with regard to its administration of the historical access provisions of Executive Order 13526. Members of the public shall address all such communications to the CIA Information and Privacy Coordinator. The CIA will respond as determined feasible and appropriate under the circumstances.

§ 1909.5 Requirements as to who may apply.

(a) *Historical researchers* - (1) *In general.* Any historical researcher as defined above may submit a request in writing to the Coordinator to be given access to classified information for purposes of that research. Any such request shall indicate the nature, purpose, and scope of the research project.

(2) *Additional considerations.* In light of the very limited Agency resources, it is the policy of the Agency to consider applications for access by historical researchers (other than

research associates) only in those instances where the researcher's needs cannot be satisfied through requests for access to reasonably described records under the Freedom of Information Act or the mandatory declassification review provisions of Executive Order 13526, and where issues of internal resource availability and fairness to all members of the historical research community militate in favor of a particular grant.

- (b) Former Presidential and Vice Presidential appointees or designees. Any former Presidential or Vice Presidential appointee or designee as defined herein may also submit a request to be given access to any classified items which they originated, reviewed, signed, or received while serving in that capacity. Requests from such appointees or designees shall be in writing to the Coordinator and shall identify the records containing the classified information of interest. Such appointees or designees may also request approval for a research associate, but there is no entitlement to such enlargement of access and the decision in this regard shall be in the sole discretion of the Senior Agency Official.
- (c) Former Presidents and Vice Presidents. Any former President or Vice President may submit a request for access to classified CIA information. Requests from former Presidents or Vice Presidents shall be in writing to the Coordinator and

shall identify the records containing the classified information of interest. A former President or Vice President may also request approval for a research associate, but there is no entitlement to such enlargement of access and the decision in this regard shall be in the sole discretion of the Senior Agency Official

§ 1909.6 Designation of authority to waive need-to-know and grant historical access requests.

- (a) The Agency Release Panel (ARP) is designated to review requests and shall issue a recommendation to the Senior Agency Official who shall issue the final CIA decision whether or not to waive the need-to-know and grant requests for access by historical researchers, by former Presidential and Vice Presidential appointees and designees, or by former Presidents and Vice Presidents under Executive Order 13526 (or successor Orders) and these regulations.
- (b) ARP Membership. The ARP is chaired by the Director, Information Management Services and composed of the Chief, Information Review and Release Group, the Chief, Classification Management Program Office, the Information Review Officers from the various Directorates and the DCIA area, as well as the representatives of the various release programs and offices

within CIA. The Information and Privacy Coordinator also serves as Executive Secretary of the ARP.

§ 1909.7 Receipt, recording, and tasking.

The Information and Privacy Coordinator shall within ten (10) days make a record of each request for access received under this part, acknowledge receipt to the requester in writing, and take the following actions:

- (a) *Compliance with general requirements.* The Coordinator shall review each request under this part and determine whether it meets the general requirements as set forth in § 1909.5 and notify the requester that the request has been accepted for consideration if it does. If it does not, the Coordinator shall so notify the requester and explain the basis for this decision and any steps that can be taken to perfect the request.
- (b) *Action on requests meeting general requirements.* For requests which meet the requirements of § 1909.5, the Coordinator shall thereafter task the Director, Center for the Study of Intelligence, the originator(s) of the information for which access is sought, and other interested parties to review the request and provide their input concerning whether or not the required determinations set forth in § 1909.8 can be made. Additional taskings may be directed as required during the review process.

§ 1909.8 Determinations on requests for access by former Presidents and Vice Presidents, former Presidential and Vice Presidential appointees or designees, and historical researchers.

- (a) *Required determinations for former Presidents and Vice Presidents.* In order to recommend approval of an access request made by a former President or Vice President, the ARP must make the following determinations in writing:
- (1) That the access is consistent with the interest of national security;
 - (2) That a nondisclosure agreement has been or will be executed by the requester and other appropriate steps are taken to assure that classified information will not be disclosed or otherwise compromised;
 - (3) That a CIA prepublication review agreement has been or will be executed by the requester which provides for a review of notes and any resulting manuscript; and,
 - (4) That appropriate steps can be taken to ensure that the information is safeguarded in a manner consistent with Executive Order 13526.
- (b) *Required determinations for former Presidential and Vice Presidential appointees or designees.* In order to recommend

approval of an access request made by a former Presidential or Vice Presidential appointee or designee, the ARP must make the following determinations in writing:

(1) That the requester has previously occupied a senior policy-making position to which the requester was appointed or designated by the President or Vice President;

(2) That the access is consistent with the interest of national security;

(3) That a nondisclosure agreement has been or will be executed by the requester and other appropriate steps are taken to assure that classified information will not be disclosed or otherwise compromised;

(4) That a CIA prepublication review agreement has been or will be executed by the requester which provides for a review of notes and any resulting manuscript;

(5) That appropriate steps can be taken to ensure that the information is safeguarded in a manner consistent with Executive Order 13526; and,

(6) That access will be limited to items that the person originated, reviewed, signed, or received while serving as a Presidential or Vice Presidential appointee or designee.

(c) *Required determinations for a research associate of a former President or Vice President, or of a former*

Presidential or Vice Presidential appointee or designee.

In order to recommend approval of a request for historical access by a research associate, the ARP must make the following determinations in writing:

- (1) That the requester has been selected as a research associate of a former President or Vice President, or of a Presidential or Vice Presidential appointee or designee;
- (2) That the access is consistent with the interest of national security, and one factor in that determination is that an appropriate security check has been conducted and a security clearance or access has been issued by an appropriate U.S. Government agency;
- (3) That a nondisclosure agreement has been or will be executed by the requester and other appropriate steps are taken to assure that classified information will not be disclosed or otherwise compromised;
- (4) That a CIA prepublication review agreement has been or will be executed by the requester which provides for a review of notes and any resulting manuscript;
- (5) That appropriate steps can be taken to ensure that the information is safeguarded in a manner consistent with Executive Order 13526; and,

- (6) That, in the case of a former Presidential or Vice Presidential appointee or designee, access by the research associate will be limited to items that the Presidential or Vice Presidential appointee or designee who selected the research associate originated, reviewed, signed, or received while serving as a Presidential or Vice Presidential appointee or designee.
- (d) *Required determinations for a historical researcher (other than a research associate).* In order to recommend approval of an access request made by a historical researcher (other than a research associate to which paragraph (c) of this section applies) the ARP must make the following determinations in writing:
- (1) That a serious professional or scholarly research project by the requester is contemplated;
 - (2) That the access is consistent with the interest of national security, and one factor in that determination is that an appropriate security check has been conducted and a security clearance or access has been issued by an appropriate U.S. Government agency;
 - (3) That a nondisclosure agreement has been or will be executed by the requester, and other appropriate steps are taken to assure that classified information will not be disclosed or otherwise compromised;

- (4) That a CIA prepublication review agreement has been or will be executed by the requester, which provides for a review of notes and any resulting manuscript;
- (5) That the information requested is reasonably accessible and can be located and compiled with a reasonable effort;
- (6) That it is reasonably expected that substantial and substantive Government documents and/or information will be amenable to declassification and release and/or publication;
- (7) That sufficient resources are available for the administrative support of the historical researcher given current requirements; and,
- (8) That the request cannot be satisfied to the same extent through requests for access to reasonably described records under the Freedom of Information Act or the Mandatory Declassification Review provisions of Executive Order 13526.

§ 1909.9 Action by the ARP.

The ARP shall meet on a regular schedule and may take action when a simple majority of the total membership is present. A recommendation to the Senior Agency Official concerning whether or not to grant requests for access to classified CIA information by former Presidents or Vice

Presidents, by former Presidential or Vice Presidential appointees or designees, or by historical researchers shall be made by a majority vote of the members present.

§ 1909.10 Final CIA decision.

- (a) Upon receipt of a recommendation by the ARP concerning whether or not to grant access to classified CIA information under this part, the Senior Agency Official may, in his sole discretion, waive the need-to-know requirement and approve such access only if he or she:
 - (1) Determines in writing that access is consistent with the interests of national security;
 - (2) Takes appropriate steps to protect classified information from unauthorized disclosure or compromise and ensures that the information is safeguarded in a manner consistent with Executive Order 13526; and,
 - (3) Limits any access granted to former Presidential or Vice Presidential appointees and designees (or any research associate they select) to the items that the former Presidential or Vice Presidential appointee or designee originated, reviewed, signed, or received while serving in that capacity.
- (b) The Director of the Central Intelligence Agency reserves the authority to make a superseding decision concerning whether or not to waive the need-to-know requirement and

to grant access to classified CIA information under this part in any case only if he or she:

(1) Determines in writing that access is consistent with the interests of national security;

(2) Takes appropriate steps to protect classified information from unauthorized disclosure or compromise, and ensures that the information is safeguarded in a manner consistent with Executive Order 13526; and,

(3) Limits any historical access granted to former Presidential or Vice Presidential appointees and designees (or any research associate they select) to the items that the former Presidential or Vice Presidential appointee or designee originated, reviewed, signed, or received while serving in that capacity.

(c) The Senior Agency Official also may make a determination that a successive request for historical access falls within the scope of an earlier waiver of the "need-to-know" criterion under section 4.4 of the Order, so long as the extant waiver is no more than two years old.

§ 1909.11 Notification of decision.

The Executive Secretary shall inform the requester of the final CIA decision and, if favorable, shall manage the access for such period of time as deemed required, but in no event for more than two years unless renewed by the Senior Agency

Official, in accordance with the requirements of this part for waiving need-to-know and granting access in the first instance.

§ 1909.12 Termination of access.

The Coordinator shall cancel any authorization and deny any further access whenever the Director of Security cancels the security clearance of any person who has been granted access to classified CIA information under the part; or whenever the Senior Agency Official, or the Director of the Central Intelligence Agency, determines that continued access would no longer be consistent with the requirements of this part; or at the conclusion of the authorized period of up to two years if there is no renewal under § 1909.11.

Dated: August 30, 2016.

Joseph W. Lambert,
Director, Information Management Services.
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